

**Small Claims
Final Determination
Findings and Conclusions**

Petition: 45-001-13-1-5-00280-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-32-302-002.000-001
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated this appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on December 9, 2015. On January 26, 2016, Petitioner filed the Form 131 with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on July 10, 2017. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn as a witness. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant residential lot located at 2800 51st Avenue in Gary.
6. For 2013, the property was assessed at \$16,200.
7. Petitioner requested an assessed value of \$7,500.

Record

8. The official record contains the following:
 - a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit A:	Plat map,
Respondent Exhibit 1:	Property record card for the subject property,
Respondent Exhibit 2:	GIS map,
Respondent Exhibit 3:	List of comparable sales,
Board Exhibit A:	Form 131 petition and attachments,
Board Exhibit B:	Notice of hearing
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code 6-1.1-15-17.2(b).
11. Second, Ind. Code 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither party offers evidence that suffices to prove the property's correct assessment, it reverts to the previous year's value. Ind. Code § 6-1.1-15-17.2(b).
14. The assessed value did not increase from 2012 to 2013. Petitioner, therefore, has the burden of proof.

Summary of Parties' Contentions

15. Petitioner's case:
 - a. Petitioner contends the subject property is a "front" parcel and has limited value. He claims that it is undevelopable and unbuildable. *Nowacki testimony*.
 - b. Petitioner contends there is inconsistency in the assessed values of neighboring properties. For example, Petitioner contends the property across the street is ten times larger than the subject property and is assessed at \$37,000. *Nowacki testimony*.
 - c. Petitioner contends the problem in Gary is over-assessment. He claims the assessed values are out of line with market values to the point that it is destroying the community. He contends the state should take action to make corrections not only to achieve conformity among assessed values, but to bring them in line with actual market values. *Nowacki testimony*.
16. Respondent's case:
 - a. Respondent contends Petitioner has not presented any evidence to substantiate his claims. *Metz testimony*.
 - b. Respondent has submitted evidence regarding sales of vacant land. Based on those sales, Respondent requests the assessed value be increased to \$29,400. *Metz testimony; Resp't Ex. 3*.

ANALYSIS

17. Petitioner failed to make a prima facie case for a reduction in the assessed value. Respondent failed to make a prima facie case for an increase in the assessed value. The Board reached these decisions for the following reasons:
 - a. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-

- use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
- b. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the assessment at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2 (c).
- c. Petitioner contends the property should be assessed at \$7,500. Petitioner presented no substantial evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 70 N.E.2d 1113, 1118 (Ind. Tax Ct. 198). Consequently, Petitioner failed to make a prima facie case for lowering the assessment.
- d. Respondent, however, requested the assessed value be increased to \$29,400. In support of that value, Respondent submitted a list of vacant land sales in Gary. In making his argument, Respondent essentially relied on a sales comparison approach to establish market value-in-use. See 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on "sales of comparable improved properties and adjust the selling prices to reflect the subject property's total value."); *see also Long*, 821 N.E.2d 466, 469.
- e. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f. While the purportedly comparable properties are vacant lots, Respondent made no meaningful comparison between those properties and the subject property.

Respondent also failed to address any differences between those properties and the subject property. As a result, Respondent failed to make a prima facie case for an increase in the assessment.

CONCLUSION

18. Petitioner failed to establish a prima facie case for a reduction in the assessed value. Respondent similarly failed to make a prima facie case for an increase in the assessed value. Consequently, the Board finds there should be no change in the assessed value for 2013.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 assessed value should not be changed

ISSUED: October 4, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

James Nowacki
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